

Legal Responsibility of Perpetrators of The Criminal Act of Aggravated Theft (Study of Decision No. 47/Pid.B/2022/Pn Lbo)

Raihan Gautama Benyamin Ginano ¹⁾ & Gunarto ²⁾

¹⁾Master of Notary Law, Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: raihangautamabenyamininginano.std@unissula.ac.id

²⁾Master of Notary Law, Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: gunarto@unissula.ac.id

Abstract. *This study aims to analyze the legal aspects of aggravated theft in the context of social justice, focusing on Case Number 47/Pid.B/2022/PN Lbo. It examines the application of criminal sanctions against the perpetrator and considers the judge's perspective in delivering the verdict. The research addresses two main questions: first, how are criminal sanctions applied in this case, and second, how do the judge's considerations reflect the values of social justice. Employing a descriptive analytical method, this study explores the legal dimensions of aggravated theft within the specified case. The findings underscore the importance of a social justice-based approach in law enforcement, which emphasizes not only punishment but also rehabilitation and crime prevention, in order to create a more equitable and effective justice system.*

Keywords: *Assault; Criminal; Law.*

1. Introduction

The Unitary State of the Republic of Indonesia (NKRI) is a state based on the rule of law. Article 1, paragraph 3 of the 1945 Constitution states that Indonesia is a state not based on power (*maachstaat*). All aspects of society, statehood, and government must be governed by law.¹To realize a state based on the rule of law, legal instruments are essential to regulate all aspects of social life and maintain justice and balance. Pancasila and the 1945 Constitution serve as philosophical foundations for national and state life, not only in legislation but also in all aspects of life.² According to JCT Simorangkir and Woerjono Sastropranoto, law is a coercive rule that determines human actions in society and is made by an official institution that is responsible for violations of the rules, which causes action, such as giving punishment.³

¹Muntoha, *The Legal State of Indonesia after the Amendment to the 1945 Constitution*, Kaukaba Dipantara, Yogyakarta, 2013, pp. 1-2.

²Achmad Irwan Hamzani, "Conceiving Indonesia as a State of Law that Makes Its People Happy", *Yustisia Journal*, Edition 90, (September-December), 2014, p. 141

³CST Kansil, *Introduction to Indonesian Legal Science*, Rineka Cipta, Jakarta, 2011, pp. 33-34.

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Law is coercive, so every citizen must obey the law because violations will be subject to sanctions. There are laws in force in Indonesia, including criminal law. According to Sudarsono, criminal law is the law that regulates crimes and acts that violate the public interest, and these acts are punishable by criminal sanctions that cause suffering. Meanwhile, Professor Moeljatno explains that criminal law is one of the laws in force in a country to:⁴

1. Determining which actions may not be carried out and are prohibited, then accompanied by threats or sanctions in the form of certain criminal penalties for anyone who violates the prohibition.
2. Determining when and in what cases those who have violated these prohibitions can be subject to or sentenced to the penalties that have been threatened.
3. Determining how criminal penalties can be imposed if someone is suspected of violating the prohibition.

One of the most common social phenomena today is aggravated theft. This crime is strictly prohibited by law. Therefore, to protect the public, perpetrators of these crimes can be punished according to applicable legal procedures. Aggravated theft has had significant negative consequences in our society. Law enforcement officers have used various methods to eradicate it, as well as appeals and recommendations from religious leaders to the public that it is not a crime of theft. Most thieves will do whatever they want to satisfy their need for money or stolen goods.

Social life is constantly evolving and constantly changing, bringing not only positive but also frequent negative impacts. Furthermore, people struggle to adapt, leading to numerous conflicts and various problems. As a result, people engage in deviant behavior, committing various crimes for their own gain and satisfaction, without regard for the suffering of others.

A crime is an act that violates the law and cannot be erased. It remains difficult for a criminal to defend himself by claiming innocence due to the social stigma that the perpetrator will repeat their actions and continue to harm others. Print and electronic media portray certain acts that violate the law and disturb the public, including theft.⁵

The impact of the current economic crisis is intensifying. Jobs are so scarce that not everyone has them. Like jobs, happiness is also prevalent, resulting in widespread unemployment. People with low levels of happiness tend to ignore rules and regulations. To cope with this situation and meet their needs, people tend to resort to any means necessary, such as theft.

The crime of theft is regulated in Chapter 22 of Law Number 1 of 1946, Book 2 of the Criminal Code, Articles 362 to 367. Five types of theft are regulated, namely:

1. Ordinary theft (Article 362 of the Criminal Code);

⁴Moeljatno, Principles of Criminal Law, Rineka Cipta, Jakarta, 2008, p. 1.

⁵Andi Matalata, Compensation for Victims, (In JE Sahetapy), Victimology: An Anthology, Pustaka Sinar Harapan, Jakarta, 1987, p. 35.

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2. Aggravated theft (Article 363 of the Criminal Code);
3. Minor theft (Article 364 of the Criminal Code);
4. Theft with violence (Article 365 of the Criminal Code);
5. Family Theft (Article 367 of the Criminal Code).

The classification of theft according to the Criminal Code is intended to facilitate categorization of criminal acts committed by an individual or group of people.

According to PAF Lamintang, the crime of aggravated theft (*gequalificeerde diefstal*) is theft which has elements of the act of theft in its basic form, which because of the addition of other elements, the threat of punishment becomes heavier.⁶

Theft as regulated in Article 363 of the Criminal Code includes "special theft", meaning theft in a certain way or under certain circumstances, so that it is more serious.⁷

The word theft in the formulation of the crime of theft with qualifications as regulated in Article 363 of the Criminal Code has the same meaning as the word theft as theft in its basic form. Aggravated Theft or Special Theft or Theft with Qualifications (*gequalificeerde diefstal*) regulated in Article 363 of the Criminal Code, is ordinary theft which in its implementation is accompanied by certain aggravating circumstances and has a risk of a more serious crime than ordinary theft.⁸

The crime of theft is regulated in Article 363 and Article 365, which also means qualified theft. Wirjono Prodjodikoro defines it as "special theft," because the theft is carried out in a specific manner. R. Soesilo considers it more appropriate. His book (the Criminal Code) discusses "Aggravated Theft," for this reason, stealing can be punished with a heavier penalty.⁹

The crime of theft as regulated in Chapter XXIV of the New Criminal Code:

Article 477

(1) Any person who commits:

- a. theft of sacred religious objects;
- b. theft of antiquities;
- c. theft of livestock or goods which are a person's main source of livelihood or income;
- d. theft during fire, explosion, natural disaster, shipwreck, stranding, airplane accident, train accident, road traffic accident, riot, rebellion or war;

⁶PAF Lamintang and Djisman Samosir, *Special Crimes*, (Bandung: CV. Nuansa Aulia, 2010), pp. 67-68.

⁷Sudrajat Bassar. 1986. *Certain Criminal Acts in the Criminal Code*. Second Edition. Bandung: Remadja Karya.

⁸Wirjono Prodjodikoro, *Certain Criminal Acts in Indonesia*, (Bandung, Eresco), 1986, p. 19.

⁹Hediati Koeswadji Hermien, *Property Crimes, Principles, Special Issues and Problems*, First Edition, Sinar Wijaya Surabaya: Hukum, 1984, p. 3.

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e. theft at night in a house or in an enclosed yard where a house is located, carried out by a person whose presence there is unknown or not wanted by the person entitled to it;

f. theft by means of damaging, dismantling, cutting, breaking, climbing, using fake keys, using fake orders, or wearing fake official clothing, to enter the place of committing the crime or to get to the goods taken; or

g. joint and conspiratorial theft.

(2) If the act as referred to in paragraph (1) letter e is accompanied by one of the methods as referred to in paragraph (1) letters f and g, the punishment shall be a maximum prison sentence of 9 (nine) years.¹⁰

The types of theft mentioned above, referred to as theft in its primary form, are ordinary theft (Article 362 of the Criminal Code). Other thefts, however, are ordinary thefts accompanied by special circumstances. These thefts accompanied by special circumstances are called aggravated theft.¹¹ In the criminal acts that the author is researching, there are "aggravating" elements as regulated in Article 363 paragraph (1) 3 of the Criminal Code, namely:

"Theft at night in a house or enclosed yard where there is a house, carried out by someone whose presence there is unknown or not desired by the authorized party."

The crime of theft is one of the types of criminal law crimes in Indonesia, this crime is regulated in Article 362 of the Criminal Code. There are several classifications of the type of theft crime, one of which is the crime of aggravated theft regulated in Article 363 of the Criminal Code. Although it has been clearly regulated in the Criminal Code along with the sanctions that will be imposed on the perpetrators, it does not make the Indonesian people deterred and not do it, the evidence is that this crime still often occurs whether reported to the police or not, many of these theft crimes are not fully revealed and not infrequently the perpetrators of this crime are not revealed.¹²

This research refers to the crime of theft with aggravated case number 47/Pid.B/2023/PN Amp. That the Defendant AY (hereinafter referred to as the Defendant) on Sunday, March 6, 2022 at approximately 01.30 WITA at the M Rizki Boarding House, Pentadio Timur Village, Telaga Biru District, Gorontalo Regency or at least in another place that is still within the jurisdiction of the Limboto District Court has taken an item in the form of a Honda Blade motorcycle, orange and black, with the police number DM 6007 BS, which is wholly or partially owned by another person, with the intention of being owned unlawfully which was carried out at night in a house or closed yard where the house is located, which was carried out by a person who was there unknown or unwanted by the entitled party.

¹⁰DPR-RI, New Draft Law, New Criminal Code FINAL, 2022.

¹¹Kusfitono, Umar Ma'ruf, Sri Kusriyah, Implementation of Constitutional Court Decision Number 130/PUU-XIII/2015 Regarding the Investigation Process of Aggravated Theft at the Kendal Police Criminal Investigation Unit, *Khaira Ummah Law Journal*, Vol. 12. No. 4 December, 2020, p. 37

¹²Rezna Fitriawan, R. Sugiharto, The Role of the Criminal Investigation Unit in Revealing Aggravated Theft Crimes in the Jurisdiction of the Demak Police Resort, *I Unissula Student Scientific Constellation (KIMU) 5*, Journal of Sultan Agung Islamic University Semarang, March 23, 2021, p. 2

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That at the time and place as described above, Defendant AY on Saturday, March 5, 2022 at around 23.50 WITA knocked on the door of the boarding house of the victim witness SY who had just come to take the cellphone charger belonging to the Defendant which was in the victim witness SY's room and then the Defendant said he asked for help to be taken to Telaga but the victim witness SY said he was sleepy and could only take him to Indomaret on the road because there was a friend of the Defendant who would pick him up so at that time the victim witness SY wanted to take him, after taking the defendant, the victim witness SY returned to the boarding house and not long after that at around 01.30 WITA in the morning the Defendant walked back to the boarding house where the Defendant had intended to steal the motorbike belonging to the victim witness SY and after arriving in front of the boarding house the Defendant monitored the situation until it was quiet then the Defendant opened the gate then pulled the motorbike to the highway after that the Defendant used the foot starter and after the motorbike engine started the Defendant immediately went to take the motorbike to the Defendant's village which is located in the village Panguyaman without the knowledge or permission of the victim witness SY.

That, at around 04.30 WITA the Defendant received a call from the victim witness SY who asked whether his motorbike was being used by the Defendant but at that time the Defendant said to the victim witness SY that "no, I'm using your motorbike" or "I'm not using your motorbike", then after arriving at Panguyaman Village, the Defendant immediately left the motorbike at the house of the Defendant's former sister-in-law, namely Ms. ARS and the next day the Defendant took the motorbike back and sold it to witness UKA for Rp. 3,900,000,- (three million nine hundred thousand rupiah), from the sale of the motorbike the Defendant used to pay debts and buy the Defendant's personal needs.

That as a result of the actions of the Defendant, the witness victim SLAMET K.YUNUS suffered a loss of Rp. 7,000,000.- (seven million rupiah)) or at least more than Rp. 2,500,000.- (two million five hundred thousand rupiah). The Defendant's actions are as regulated and subject to criminal penalties in Article 363 Paragraph (1), 3 of the Criminal Code.

Based on the description above, the phenomenon of the crime of theft has become a special attraction for the author to study this matter in more depth by conducting research, for writing a thesis entitled "Legal Responsibility of Perpetrators of the Crime of Aggravated Theft (Study of Decision No. 47/Pid.B/2022/Pn Lbo)"

2. Research Methods

The approach method used in this research is the normative juridical approach. In the normative juridical approach, legal research is conducted by examining library materials or secondary data as the basis for research by conducting searches of regulations and literature related to the problem being studied. The type of research used in compiling this thesis proposal is descriptive analytical research where literature studies are used as secondary data, then discussed, observed and compared conceptually with applicable laws and regulations.

3. Results and Discussion

3.1. Implementation of Criminal Sanctions Regarding the Crime of Theft with Aggravation Case Study Number 47/Pid.B/2022/PN Lbo?

The crime of aggravated theft is one of the crimes regulated in the Criminal Code (KUHP), specifically in Article 363. In the context of the case study number 47/Pid.B/2022/PN Lbo, the analysis of the application of criminal sanctions against perpetrators of aggravated theft will be carried out by paying attention to the elements contained in the article as well as the judge's considerations in imposing the sentence. In case number 47/Pid.B/2022/PN Lbo, the perpetrator is suspected of fulfilling all of these elements, so he can be subject to sanctions based on Article 363 of the Criminal Code.

The case in Case Number 47/Pid.B/2022/PN Lbo is the Decision of the Panel of Judges Number 47/Pid.B/2022/PN Lbo dated May 23, 2022, regarding the trial date. The criminal charges filed by the Public Prosecutor are essentially as follows:

1. Declaring that the Defendant AY has been proven and convincingly guilty of committing the crime of "Aggravated Theft" as regulated in Article 363 paragraph 1 point 3 of the Criminal Code, as in the single indictment.
2. Sentencing the Defendant AY to 1 (one) year and 6 (six) months in prison minus the temporary detention period already served by the Defendant and ordering the Defendant to remain in detention.
3. Determine that the evidence is in the form of:
 - a. 1 (one) unit of Honda Blade motorbike, orange black, with engine number: JBH1E-1201388, frame number: MH1JBH112CK205592, license plate number: DM 6007 BS, in the name of STNK FACRIZAL
 - b. 1 (one) sheet of STNK for a black orange Honda Blade motorbike with engine number: JBH1E-1201388, Frame Number: MH1JBH112CK205592 Plate Number: DM 6007 BS in the name of STNK FACRIZAL. Returned to witness Adam Yunus.
4. Ordering the Defendant to pay court costs of IDR 5,000.00 (two thousand rupiah);

After hearing the Defendant's defense, which in essence was that the Defendant admitted his guilt and promised not to repeat his actions, the Defendant then asked for a lighter sentence;

Having heard the Public Prosecutor's reply and the Defendant's reply, each of which maintained its original position;

Considering, that the Defendant was brought to trial based on the indictment with Case Register Number: PDM-28/LIMBO/04/2022 dated May 19, 2022, in the form of a single indictment, as follows:

That the defendant AY on Sunday, March 6, 2022 at around 01.30 WITA at the M Rizki Boarding House, Pentadio Timur Village, Telaga Biru District, Gorontalo Regency or at least

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in another place that is still within the jurisdiction of the Limboto District Court, has taken an item in the form of a Honda Blade motorcycle, orange and black, with the license plate number DM 6007 BS, which is wholly or partly owned by another person, with the intention of possessing it illegally, which was carried out at night in a house or closed yard where the house is located, which was carried out by a person who was there unknown or not wanted by the rightful party.

The methods used by the defendant were:

1. That at the time and place as described above, Defendant AY on Saturday, March 5, 2022 at around 23.50 WITA knocked on the door of the boarding house of the victim witness SY who had just come to take the cellphone charger belonging to the Defendant which was in the victim witness SY's room and then the Defendant said he asked for help to be taken to Telaga but the victim witness SY said he was sleepy and could only take him to Indomaret on the road because there was a friend of the Defendant who would pick him up so at that time the victim witness SY wanted to take him, after taking the defendant, the victim witness SY returned to the boarding house and not long after that at around 01.30 WITA in the morning the Defendant walked back to the boarding house where the Defendant had intended to steal the motorbike belonging to the victim witness SY and after arriving in front of the boarding house the Defendant monitored the situation until it was quiet then the Defendant opened the gate then pulled the motorbike to the highway after that the Defendant used the foot starter and after the motorbike engine started the Defendant immediately went to take the motorbike to the Defendant's village which is located in the village Panguyaman without the knowledge or permission of the victim witness SY.

2. That at around 04.30 WITA the Defendant received a call from the victim witness SY who asked whether his motorbike was being used by the Defendant but at that time the Defendant said to the victim witness SY that "no, I'm using your motorbike" or "I'm not using your motorbike", then after arriving at Panguyaman Village, the Defendant immediately left the motorbike at the house of the Defendant's former sister-in-law, namely Ms. ARS and the next day the Defendant took the motorbike back and sold it to witness UKA for Rp. 3,900,000,- (three million nine hundred thousand rupiah), from the sale of the motorbike the Defendant used to pay debts and buy the Defendant's personal needs.

3. That as a result of the actions of the Defendant, witness Victim SY suffered a loss of Rp. 7,000,000,- (seven million rupiah)) or at least more than Rp. 2,500,000,- (two million five hundred thousand rupiah).

Thus, the Defendant's actions are as regulated and subject to criminal penalties in Article 363 Paragraph (1), 3 of the Criminal Code;

Considering, that the Panel of Judges will then consider whether, based on the legal facts above, the Defendant can be declared to have committed the crime of which he is accused or otherwise;

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Considering, that the Defendant has been charged by the Public Prosecutor with a single charge, namely violating Article 363 paragraph (1) 3 of the Criminal Code, the elements of which are as follows:

1. Whoever;
2. Taking something that belongs wholly or partly to another person with the intention of possessing it unlawfully;
3. Carried out at night in a house or enclosed yard where there is a house that is not wanted by the person entitled; Considering, that regarding the elements of the article, the Panel of Judges considers the following:

Ad.1. Whoever

Considering, that what is meant by anyone is any person/human being as a legal subject who becomes a suspect or defendant because he is accused of committing a crime; That in this case the person in question is AY as the person who is presented as the Defendant based on the indictment of Case Register Number: PDM-22/LIMBO/03/2022 dated May 19, 2022;

Considering that the witnesses have been heard during the trial and the Defendant himself has admitted that the person present and examined in this trial is indeed AY, whose identity matches that contained in the indictment. Therefore, there is no error in persona presented at the trial.

Considering, that the Panel of Judges is of the opinion that the first element has been fulfilled;

Considering, that whether or not the Defendant has been proven to have committed a crime is determined by considering the elements of the following article;

Ad. 2. Taking something that belongs wholly or partly to another person with the intention of possessing it unlawfully;

Considering, that the act referred to in this element is Theft, namely the act of taking or moving an item from its original place to another place or to a certain place so that the item is in his control. The perpetrator's intention is to take the item to own it without the knowledge or permission of the rightful owner so that the act causes loss and/or is an unlawful act;

Considering, that based on the legal facts at the trial on Sunday, March 6, 2022 2021, at around 01.30 WITA, located on the terrace in front of Witness SY's boarding house (M. Rizki's Boarding House) in Pentadio Timur Village, Telaga District, Gorontalo Regency, Defendant AY had taken 1 (one) unit of Honda Blade brand motorbike, orange black in color with Police number DM 6007 BS belonging to Witness Adam Yunus which was in the possession of the witness's child, namely Witness SY;

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That the Defendant carried out the act in the following manner: on the day and date at approximately 23.30 WITA the Defendant came to the witness's boarding room SY to pick up his cellphone charger. Next, the Defendant asked the witness SY to take him to Indomaret on the main road because there was a friend of the Defendant who would pick him up to go to Telaga. The witness SY agreed to the Defendant's request. After dropping the Defendant off at Indomaret, the witness SY returned to his boarding house and parked his motorbike on the front porch of his boarding room.

That at around 01.30 WITA, it turned out that the Defendant returned to the boarding house with the aim of taking the motorbike belonging to witness SY. After arriving in front of the boarding house and observing the quiet situation, the Defendant then entered the yard by opening the gate which was not locked and then took it by pushing/driving the motorbike belonging to witness SY until it reached the main road. After that, the Defendant started the motorbike engine and immediately went to take the motorbike to Panguyaman Village to be left at the house of his brother-in-law named ARS;

That the Defendant then sold Witness Yunus' motorbike to witness UKA for Rp. 3,900,000.00- (three million nine hundred thousand rupiah) and the Defendant used the money from selling the motorbike to pay off debts and meet his daily needs;

That the Defendant's actions were carried out without the permission or knowledge of witness SY and as a result of the Defendant's actions, witness SY suffered a loss of Rp. 7,000,000.00 (Seven million rupiah) according to the purchase price and repair costs of the motorbike; Considering, that based on the legal facts above, the Defendant's actions of taking 1 (one) motorbike belonging to witness SY without the knowledge or permission of the owner and then selling the motorbike and using the money from the sale of the motorbike to pay debts and fulfill his daily needs is included in taking something belonging to another person with the intention of owning it illegally or Theft:

Considering, that based on these considerations, the Panel of Judges is of the opinion that the second element in this article has been fulfilled;

Ad. 3. The element "Performed at night in a closed house or yard where there is a house that is not wanted by the person entitled to it"

Considering, that based on Article 98 of the Criminal Code, night is defined as the time between sunset and sunrise, namely 18.00 WITA to 06.00 WITA. Meanwhile, what is meant by a house or residence is defined as any building used as a residence;

Considering, that based on the legal facts in the trial, the Defendant committed the theft on Sunday, March 6, 2022, at approximately 01.30 WITA and the place where the Defendant stole the motorbike was at M. Rizki's boarding house, which was a place deliberately made, rented for living or used as a residence. Thus, the Panel of Judges is of the opinion that the third element in this article has been fulfilled;

Considering, that based on the above considerations, it appears that the Defendant's actions have fulfilled all the elements of the Public Prosecutor's single indictment article so

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that the Panel of Judges concludes that the Defendant has been legally and convincingly proven to have committed the criminal act as stated in the indictment;

Considering that in the trial the Panel of Judges did not find any circumstances that could eliminate the Defendant's criminal responsibility, either as a justification or excuse, the Defendant must be held responsible for his actions;

Considering, that because the Defendant is capable of being responsible, he must be declared guilty and sentenced;

Considering that in this case the Defendant has been subject to legal arrest and/or detention, the period of arrest and/or detention must be deducted in full from the sentence imposed;

Considering that, because the Defendant is being detained and the detention of the Defendant is based on sufficient grounds, it is necessary to determine that the Defendant remains in detention;

Considering, that regarding the evidence in the form of 1 (one) unit of black orange Honda Blade motorbike with engine number: JBH1E-1201388, frame number: MH1JBH112CK205592 Plate number: DM 6007 BS in the name of STNK FACRIZAL and 1 (one) sheet of STNK for black orange Honda Blade motorbike with engine number: JBH1E-1201388, frame number: MH1JBH112CK205592 Plate number: DM 6007 BS in the name of STNK FACRIZAL, because it has been used for the purposes of examining this case and the legitimate owner of the evidence has been identified, it is determined that the evidence will be returned to its owner;

Considering, that in order to impose a criminal sentence on the Defendant, it is necessary to first consider the aggravating and mitigating circumstances of the Defendant;

Aggravating circumstances:

1. The defendant's actions disturbed the community; Mitigating circumstances:
2. The defendant admitted and regretted his mistake;
3. The defendant promised not to repeat his actions;

Considering, that because the Defendant was sentenced, he must also be burdened with paying court costs; Taking into account Article 363 paragraph (1) 3 of the Criminal Code and Law Number 8 of 1981 concerning Criminal Procedure Law and other relevant laws and regulations;

The application of criminal sanctions in case number 47/Pid.B/2022/PN Lbo demonstrates the importance of both legal and non-legal considerations in sentencing. By considering aggravating and mitigating circumstances, and referring to applicable legal provisions, the panel of judges strives to impose a fair sentence in accordance with the principles of social justice. Law enforcement through the application of criminal sanctions is expected to provide a deterrent effect for perpetrators and maintain the safety of society as a whole.

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In the judge's analysis, which ultimately sentenced the defendant, the panel of judges considered both aggravating and mitigating circumstances. The following is an analysis of both aspects:

1. Aggravating Circumstances:

The Defendant's Actions Disturbed the Community: The defendant's theft not only harmed the victim but also created a sense of insecurity in the community. This is an aggravating factor in the sentence, as theft can disrupt public order and create fear among the community.

2. Extenuating Circumstances:

Defendant's Confession and Remorse: The defendant admits his guilt and shows remorse for his actions. This confession is often considered a mitigating factor in sentencing. **Promise of Non-Reoffending:** The defendant promises not to repeat similar crimes in the future, demonstrating a good intention to improve himself.

The legal basis for determining the sanctions carried out by the panel of judges refers to Article 363 paragraph (1) of the Criminal Code which regulates aggravated theft. In this article, there are several circumstances that can increase the penalty, such as:

1. Theft committed at night.
2. Theft by more than one person.
3. Theft committed in a disaster situation or by means of destruction.

In this case, if it is proven that the theft was committed under certain aggravating circumstances, criminal sanctions can be imposed in accordance with legal provisions. The application of criminal sanctions in this case also emphasizes that judges are not only bound by the text of the law, but also by an interpretation that aligns with society's sense of justice. In their deliberations, judges strive to balance legal certainty, expediency, and justice, as the primary objectives of criminal law.

One important aspect of the verdict in this case was how the judge assessed the defendant's intent (*mens rea*) in committing the theft. The defendant's premeditated intent, which involved returning to the location and monitoring the situation, demonstrated complete deliberation. This strengthened the panel of judges' argument that the defendant deserved a strict criminal sanction. From a victimological perspective, the defendant's actions caused significant economic losses to the victim. The stolen motorcycle was valued at Rp7,000,000.00, which is a substantial amount for most people. This confirms that aggravated theft has a significant impact on the economic stability of the victim's individual and family.

This decision also demonstrates that the panel of judges correctly applied the doctrine of criminal responsibility. No justification or excuse was found that could eliminate the defendant's sentence. Therefore, the defendant must be fully responsible for his actions, in accordance with the principle of "no punishment without fault" (*geen straf zonder schuld*).

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The consideration of aggravating and mitigating circumstances demonstrates the judge's attention to the individualization of the crime. This is important because each defendant has a unique background that must be considered when imposing sanctions, ensuring that punishment is not merely mechanical. The imposition of a prison sentence of 1 year and 6 months can be seen as a proportional effort to provide a deterrent effect on the defendant while also considering the defendant's confession and remorse. This sentence is within reasonable limits, according to the criminal penalties stipulated in Article 363 of the Criminal Code.

This envoy sends a message to the public that aggravated theft will not be tolerated. Imprisonment is imposed not only to punish the perpetrator but also to warn the wider community against similar crimes. The judge also considers restoring the victim's rights by returning the evidence to its rightful owner. This step reflects a legal effort to restore the situation to its original state as far as possible, which is part of the principle of restorative justice.

However, the application of criminal sanctions in this case still emphasizes repressive rather than preventive aspects. The criminal verdict has not been accompanied by rehabilitation efforts for the defendant to prevent him from repeating his actions. This demonstrates the continued need to develop a restorative justice approach in Indonesian criminal law. From a criminological perspective, the defendant's actions were influenced by economic factors, as the proceeds of the theft were used to pay debts and for personal needs. This illustrates that economic motives remain a primary driver of aggravated theft.

This decision is also in line with the principle of legality as stated in Article 1 paragraph (1) of the Criminal Code, which states that no act can be punished except based on the provisions of statutory regulations. The judge upheld this principle by continuing to base the decision on Article 363 of the Criminal Code.

From a criminal law perspective, this decision embodies utilitarianism, benefiting society by reducing crime rates. Punishment is not only intended to punish the crime but also to deter similar crimes in the future.

The analysis of this case also demonstrates how the judge evaluated the evidence. The defendant's confession, supported by witness testimony and confiscated evidence, met the requirements of Article 184 of the Criminal Procedure Code concerning valid evidence. Another aspect to consider is the effectiveness of the prison sentence imposed. Short sentences are often insufficient to provide rehabilitative effects, so alternative criminal sanctions such as community service or more constructive development programs need to be considered.

The panel of judges also confirmed that the defendant's actions met the "nighttime" element as defined in the article. This element is crucial because it demonstrates the increased seriousness of the crime, committed under more vulnerable conditions. From a procedural legal perspective, this case also demonstrates the application of the principles of simple, expeditious, and low-cost justice. The trial proceeded smoothly without significant obstacles, allowing for a verdict to be rendered in a relatively short time.

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This case serves as a concrete example of how criminal law works in practice. It not only assesses the perpetrator's actions normatively but also considers the resulting social impact. This gives the verdict greater legitimacy in the eyes of the public. One notable weakness is the lack of in-depth consideration of the defendant's socioeconomic circumstances. This aspect is often relevant in determining whether the punishment imposed is truly effective or counterproductive.

The application of criminal sanctions in this case illustrates that, despite the repressive nature of criminal law, its ultimate goal remains to maintain a balance between legal certainty, justice, and expediency. This is the basis for the judge's decision. Thus, case number 47/Pid.B/2022/PN Lbo serves as a clear illustration of how the court consistently applies Article 363 of the Criminal Code, while taking into account legal, criminological, and social factors. Thus, the decision rendered is not only legally sound but also conveys a moral message to society.

3.2. What are the Judge's Considerations in Handing Down a Verdict on the Perpetrator of the Crime of Theft with aggravation based on social justice values in Case Study Number 47/Pid.B/2022/PN Lbo?

The explanation in this thesis also considers the context of case number 47/Pid.B/2022/PN Lbo, specifically the judge's considerations in handing down a verdict against a perpetrator of aggravated theft. The judge considered not only the legality of the act but also the values of social justice that must be upheld in society.

Considering, that the Defendant has been charged by the Public Prosecutor with a single charge, namely violating Article 363 paragraph (1) 3 of the Criminal Code, the elements of which are as follows:

1. Whoever;
2. Taking something that belongs wholly or partly to another person with the intention of possessing it unlawfully;
3. Carried out at night in a house or enclosed yard where there is a house that is not wanted by the person entitled; Considering, that regarding the elements of the article, the Panel of Judges considers the following:

Ad.1. Whoever, Considering, that what is meant by whoever is every person/human being as a legal subject who is a suspect or defendant because he is accused of committing a crime; That in this case the person in question is AY as the person who is presented as the Defendant based on the indictment of Case Register Number: PDM-22/LIMBO/03/2022 dated May 19, 2022;

Considering that the witnesses have been heard during the trial and the Defendant himself has admitted that the person present and examined in this trial is indeed AY, whose identity matches that contained in the indictment. Therefore, there is no error in persona presented at the trial.

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Considering, that the Panel of Judges is of the opinion that the first element has been fulfilled;

Considering, that whether or not the Defendant has been proven to have committed a crime is determined by considering the elements of the following article; Ad. 2. Taking something which is wholly or partly owned by another person with the intention of possessing it unlawfully;

Considering, that the act referred to in this element is Theft, namely the act of taking or moving an item from its original place to another place or to a certain place so that the item is in his control. The perpetrator's intention is to take the item to own it without the knowledge or permission of the rightful owner so that the act causes loss and/or is an unlawful act;

Considering, that based on the legal facts at the trial on Sunday, March 6, 2022 2021, at around 01.30 WITA, located on the terrace in front of Witness SY's boarding house (M. Rizki's Boarding House) in Pentadio Timur Village, Telaga District, Gorontalo Regency, Defendant AY had taken 1 (one) unit of Honda Blade brand motorbike, orange black in color with Police number DM 6007 BS belonging to Witness Adam Yunus which was in the possession of the witness's child, namely Witness SY;

That the act was carried out by the Defendant in the manner that on the day and date at around 23.30 WITA the Defendant came to witness SY's boarding room to take his cellphone charger. Next the Defendant asked witness SY to take him to Indomaret which was on the main road because there was a friend of the Defendant who would pick him up to go to Telaga. witness SY agreed to the Defendant's request, After dropping the Defendant off at Indomaret witness SY returned to his boarding house and parked his motorbike on the front porch of his boarding room.

That at around 01.30 WITA, it turned out that the Defendant returned to the boarding house with the aim of taking the motorbike belonging to witness SY. After arriving in front of the boarding house and observing the quiet situation, the Defendant then entered the yard by opening the gate which was not locked and then took it by pushing/driving the motorbike belonging to witness SY until it reached the main road. After that, the Defendant started the motorbike engine and immediately went to take the motorbike to Panguyaman Village to be left at the house of his brother-in-law named ARS;

That the Defendant then sold Witness Yunus' motorbike to witness UKA for Rp. 3,900,000.00- (three million nine hundred thousand rupiah) and the Defendant used the money from selling the motorbike to pay off debts and meet his daily needs;

That the Defendant's actions were carried out without the permission or knowledge of witness SY and as a result of the Defendant's actions, witness SY suffered a loss of Rp. 7,000,000.00 (seven million rupiah) according to the purchase price and repair costs of the motorbike;

Considering, that based on the legal facts above, the Defendant's actions in taking 1 (one) motorbike belonging to witness SY without the knowledge or permission of the owner, then

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selling the motorbike and using the money from the sale of the motorbike to pay debts and fulfill his daily needs, is considered taking something belonging to another person with the intention of possessing it unlawfully or theft:

Considering, that based on the above considerations, the Panel of Judges is of the opinion that the second element in this article has been fulfilled; Ad. 3. Element "Committed at night in a house or enclosed yard where there is a house that is not desired by the entitled party"

Considering, that based on Article 98 of the Criminal Code, night is defined as the time between sunset and sunrise, namely 18.00 WITA to 06.00 WITA. Meanwhile, what is meant by a house or residence is defined as any building used as a residence;

Considering, that based on the legal facts in the trial, the Defendant committed the theft on Sunday, March 6, 2022, at approximately 01.30 WITA and the place where the Defendant stole the motorbike was at M. Rizki's boarding house, which was a place deliberately made, rented for living or used as a residence. Thus, the Panel of Judges is of the opinion that the third element in this article has been fulfilled;

Considering, that based on the above considerations, it appears that the Defendant's actions have fulfilled all the elements of the Public Prosecutor's single indictment article so that the Panel of Judges concludes that the Defendant has been legally and convincingly proven to have committed the criminal act as stated in the indictment;

Considering that in the trial the Panel of Judges did not find any circumstances that could eliminate the Defendant's criminal responsibility, either as a justification or excuse, the Defendant must be held responsible for his actions; Considering that because the Defendant is capable of being responsible, he must be declared guilty and sentenced;

Considering that in this case the Defendant has been subject to legal arrest and/or detention, the period of arrest and/or detention must be deducted in full from the sentence imposed;

Considering that, because the Defendant is being detained and the detention of the Defendant is based on sufficient grounds, it is necessary to determine that the Defendant remains in detention.

Considering, that regarding the evidence in the form of 1 (one) unit of black orange Honda Blade motorbike with engine number: JBH1E-1201388, frame number: MH1JBH112CK205592 Plate number: DM 6007 BS in the name of STNK FACRIZAL and 1 (one) sheet of STNK for black orange Honda Blade motorbike with engine number: JBH1E-1201388, frame number: MH1JBH112CK205592 Plate number: DM 6007 BS in the name of STNK FACRIZAL, because it has been used for the purposes of examining this case and the legitimate owner of the evidence has been identified, it is determined that the evidence will be returned to its owner;

Considering, that in order to impose a criminal sentence on the Defendant, it is necessary to first consider the aggravating and mitigating circumstances of the Defendant;

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1. Aggravating circumstances

a. The defendant's actions disturbed the community;

2. Extenuating circumstances

a. The defendant admitted and regretted his mistake;

b. The defendant promised not to repeat his actions;

Considering, that because the Defendant was sentenced to a criminal penalty, he must also be burdened with paying court costs;

Taking into account Article 363 paragraph (1) 3 of the Criminal Code and Law Number 8 of 1981 concerning Criminal Procedure Law and other relevant laws and regulations.

In making a decision, the judge must ensure that the decision reflects social justice:

1. Victims' Interests: The verdict must provide a sense of justice for the victims for the losses they have suffered. Judges must ensure that the sanctions imposed not only punish the perpetrator but also provide reparation for the victims.

2. Impact on Society: The judge's decision must take into account the social impact of the theft and provide a deterrent effect on the perpetrator and prevent the recurrence of similar crimes in society.

The judge in this case not only assessed the formal and material aspects of the defendant's actions but also sought to explore the substantive meaning of social justice. Therefore, the verdict rendered is not merely a product of the text of the law but also a reflection of the moral and social values entrenched in society.

The judge's considerations emphasized that the victim's losses must be a crucial factor in determining the severity of the sentence. In this context, social justice is articulated as the protection of victims' rights so that the losses suffered are acknowledged and redressed. The judge also noted that aggravated theft has the potential to cause significant social unrest. Therefore, imposing a prison sentence is deemed appropriate to maintain public order and send a strong signal that the law is there to protect society from unlawful acts.

Considering aggravating and mitigating circumstances is a concrete manifestation of the principle of individualization of punishment. This reflects the fact that judges do not impose uniform sentences, but rather adapt them to the defendant's personal circumstances and the concrete impact of their actions. Judges consider the defendant's remorse to be an important factor to consider. While not eliminating guilt, an admission and promise not to repeat the offense serve as a basis for not imposing the maximum sentence. This is part of an effort to provide opportunities for social rehabilitation.

The judge's representative also demonstrated a balance between public and individual interests. On the one hand, the public needs a sense of security, while the defendant also has the right to be treated humanely. The sentence of one year and six months reflects the intersection of these two interests. The value of social justice in this case was evident when

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the judge ruled that the evidence be returned to its rightful owner. This action was not merely procedural, but a concrete form of restitution of the victim's rights.

The judge also implicitly considers the economic factors that drove the defendant to commit the crime. Although economic reasons do not justify unlawful acts, they are taken into account when determining the defendant's level of culpability, ensuring that the sentence imposed is not excessive. In their deliberations, the judge adheres to the principle of proportionality. This means that the punishment imposed must be commensurate with the level of culpability and the consequences. By not imposing the maximum sentence, the judge demonstrates consistent application of this principle.

General prevention is also a consideration. By imposing a sufficiently severe sentence, the judge hopes that the public will refrain from committing similar crimes. This is part of the social function of criminal law. The judge's considerations also reflect special prevention. The sentence is imposed to prevent the defendant from repeating their actions in the future. This deterrent effect is expected to act as a controlling factor for the defendant's behavior after release.

From a social justice perspective, this ruling implies that every violation of the law must be accounted for regardless of the perpetrator's social status. Thus, the law is upheld as an instrument of equality and non-discrimination. The judge rejected justification and excuses because there was no evidence of emergency or self-defense. This demonstrates a commitment to consistently enforcing the law, ensuring that perpetrators have no loopholes to avoid criminal responsibility.

The reduction of the sentence imposed by the defendant to the sentence imposed is a form of implementation of humanitarian principles. The judge acknowledged that the defendant has legal rights that cannot be ignored even if proven guilty. This case also demonstrates that the judge made a decision based on valid evidence as stipulated in Article 184 of the Criminal Procedure Code. Fulfilling this evidentiary aspect is crucial to maintaining the legitimacy of the decision and ensuring that it is not rendered arbitrarily.

Social justice in this case is not merely rhetoric, but is realized through a balance between protecting society, rehabilitating the victim, and providing the perpetrator with the opportunity to improve. Judges must also be aware that imprisonment is not the only means of enforcing the law. However, in this case, given the seriousness of the offense, imprisonment is deemed more appropriate than other alternatives.

This decision forms part of a jurisprudential practice that can serve as a reference in similar cases in the future. Thus, judges not only resolve individual cases but also establish consistency in law enforcement. The social justice values considered by judges align with the objectives of law, according to Gustav Radbruch, namely justice, legal certainty, and expediency. This decision seeks to accommodate all three proportionally. With all these considerations, the decision in case 47/Pid.B/2022/PN Lbo can be seen as an effort to realize substantive justice. This decision not only upholds positive law but also brings a sense of justice that is desired by the wider community.

4. Conclusion

From the analysis of case number 47/Pid.B/2022/PN Lbo concerning the crime of aggravated theft, it can be concluded that: 1. Fulfilled Legal Elements: The defendant's actions have fulfilled all the elements stipulated in Article 363 of the Criminal Code, namely taking another person's property with the intention of possessing it unlawfully, and carried out under aggravating circumstances, such as theft at night and by more than one person. 2. Judge's Considerations: In handing down a verdict, the judge took into account both aggravating and mitigating circumstances. Aggravating circumstances included the impact of the defendant's actions on the public, while mitigating circumstances included the defendant's confession and remorse. 3. Social Justice Values: The verdict must reflect social justice, where the judge's decision not only punishes the perpetrator but also provides a sense of justice for the victim and the community. By considering the social impact of theft, the judge strives to maintain public order and security. 4. Sanctions Imposed: Based on these considerations, the criminal sanctions imposed on the defendant in accordance with legal provisions are expected to provide a deterrent effect and prevent the recurrence of similar crimes in the future.

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